

TITLE IX REFRESHER

A decorative white line graphic consisting of a horizontal line that curves downwards and then back up to the right, resembling a stylized arrow or flourish.

STAYING CURRENT WITH THE LEGAL LANDSCAPE IN TITLE IX

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U.S.D. 232, Johnson County

**CHANGES (OR PROPOSED CHANGES) TO
FEDERAL REGULATIONS AND STATE LAWS
REGARDING SEX AND GENDER IN SCHOOLS**

- The US DOE received more than 240,000 public comments on the proposed rule to change Title IX.
 - Nearly twice as many comments as the Department received during its last rulemaking on Title IX.
- The Department updated its anticipated release date to October 2023 for the final Title IX rule.
- This also now the anticipated release date for the proposed Athletics regulation, which received over 150,000 comments during its recent public comment period from April 12 – May 15, 2023.
- It is also possible there will be further delays.

RELEASE OF UPDATED TITLE IX
REGULATIONS POSTPONED UNTIL
OCTOBER 2023

2022 PROPOSED AMENDMENTS TO TITLE IX REGULATIONS

Protection Against Sex Discrimination, including Sexual Harassment & Violence



- According to the US DOE, the proposed regulations would:
 - Clearly protect students and employees from all forms of sex discrimination
 - Clarify that Title IX's prohibition of discrimination based on sex includes protections against discrimination based on sex stereotypes and pregnancy.
 - Also clarifying that Title IX's protections against discrimination based on sex apply to sexual orientation and gender identity, which is necessary to fulfill Title IX's nondiscrimination mandate.
 - Provide full protection from sex-based harassment.
 - Restore vital protections for students against all forms of sex-based harassment.
 - Cover all forms of sex-based harassment, including unwelcome sex-based conduct that creates a hostile environment by denying or limiting a person's ability to participate in or benefit from a school's education program or activity.
 - Protect the right of parents and guardians to support their elementary and secondary school children.
 - Strengthen clear protection for parents, guardians, and other authorized legal representatives to act on behalf of a student, including seeking assistance under Title IX and participating in any grievance procedures.

2022 PROPOSED AMENDMENTS TO TITLE IX REGULATIONS, CONT'D.



Protection Against Sex Discrimination, including Sexual Harassment & Violence

- According to the US DOE, the proposed regulations would:
 - Protect students and employees who are pregnant or have pregnancy-related conditions.
 - Update existing protections for students, applicants, and employees against discrimination because of pregnancy or related conditions by strengthening requirements that schools provide reasonable modifications for pregnant students, reasonable break time for pregnant employees, and lactation space.
 - Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.
 - Promote accountability and fulfill Title IX's nondiscrimination mandate by requiring schools to act promptly and effectively in response to information and complaints about sex discrimination in their education programs or activities.
 - Require that schools train employees to notify the Title IX coordinator and respond to allegations of sex-based harassment in their education programs or activities.
 - Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process, including trained, unbiased decisionmakers to evaluate all permissible evidence.
 - Establish clear requirements for schools to conduct a reliable and impartial investigation of all sex discrimination complaints, as Title IX requires.

2022 PROPOSED AMENDMENTS TO TITLE IX REGULATIONS - ATHLETICS

Highlighted that nothing in the proposed rule would change the longstanding requirements that women and girls be afforded equal athletic opportunity, and the proposed rule affirms that schools can offer separate men's and boys' and women's and girls' sports teams in certain circumstances.

2022 PROPOSED AMENDMENTS TO TITLE IX REGULATIONS



Student Eligibility for Athletic Teams

- Under the proposed regulation, schools would not be permitted to adopt or apply a one-size-fits all policy that categorically bans transgender students from participating on teams consistent with their gender identity.
 - Instead, the proposed approach would allow schools flexibility to develop team eligibility criteria that serve important educational objectives, such as ensuring fairness in competition or preventing sports-related injury.
 - These criteria would have to account for the sport, level of competition, and grade or education level to which they apply and could not be premised on disapproval of transgender students or a desire to harm a particular student.
 - The criteria also would have to minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.
- One-size-fits-all policies that categorically ban transgender students from participating in athletics consistent with their gender identity across all sports, age groups, and levels of competition would not satisfy the proposed regulation.

KANSAS LEGISLATION IMPACTING GENDER AND SEX

HB 2238 – Fairness in Women’s Sports Act



- Athletic teams or sports designated for females, women or girls shall not be open to students of the male sex.
- Tasks KSHSAA to adopt rules and regulations for its member schools to implement the provisions of the law.

SB 180 – Women’s Bill of Rights



- Allows for distinctions between the sexes with respect to athletics, prisons or other detention facilities, domestic violence shelters, rape crisis centers, locker rooms, restrooms and other areas.
- Requires collection of vital statistics to identify each individual as either male or female at birth.

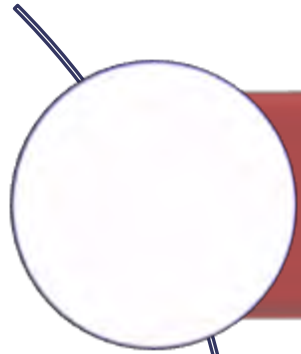
HB 2138 – Overnight Accommodations



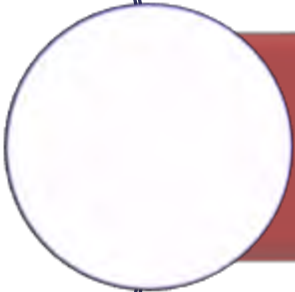
Requires separate overnight accommodations be provided for students of each biological sex during school district sponsored activities.



TITLE IX TRAINING



Introductory and Background Information



What is Sexual Harassment?



Overview of Formal Complaint and Investigation Process

SUMMARY OF CHANGES TO TITLE IX IN 2020

- No changes to existing regulations related to athletic participation, employment, or single-sex education
- Defines sexual harassment
- Provides terminology and definitions for use in Title IX complaints
 - Specific roles of Title IX Coordinator, Investigator, Decision-Maker
 - Requirements of Determination of Responsibility
- Requires response when district has “actual knowledge” of sexual harassment
- Provides due process rights to accusers and accused persons in sexual harassment investigation and decision making, as well as outlining the procedure for response:
 - Mandates provision of supportive measures during investigation process
 - Prohibits retaliation

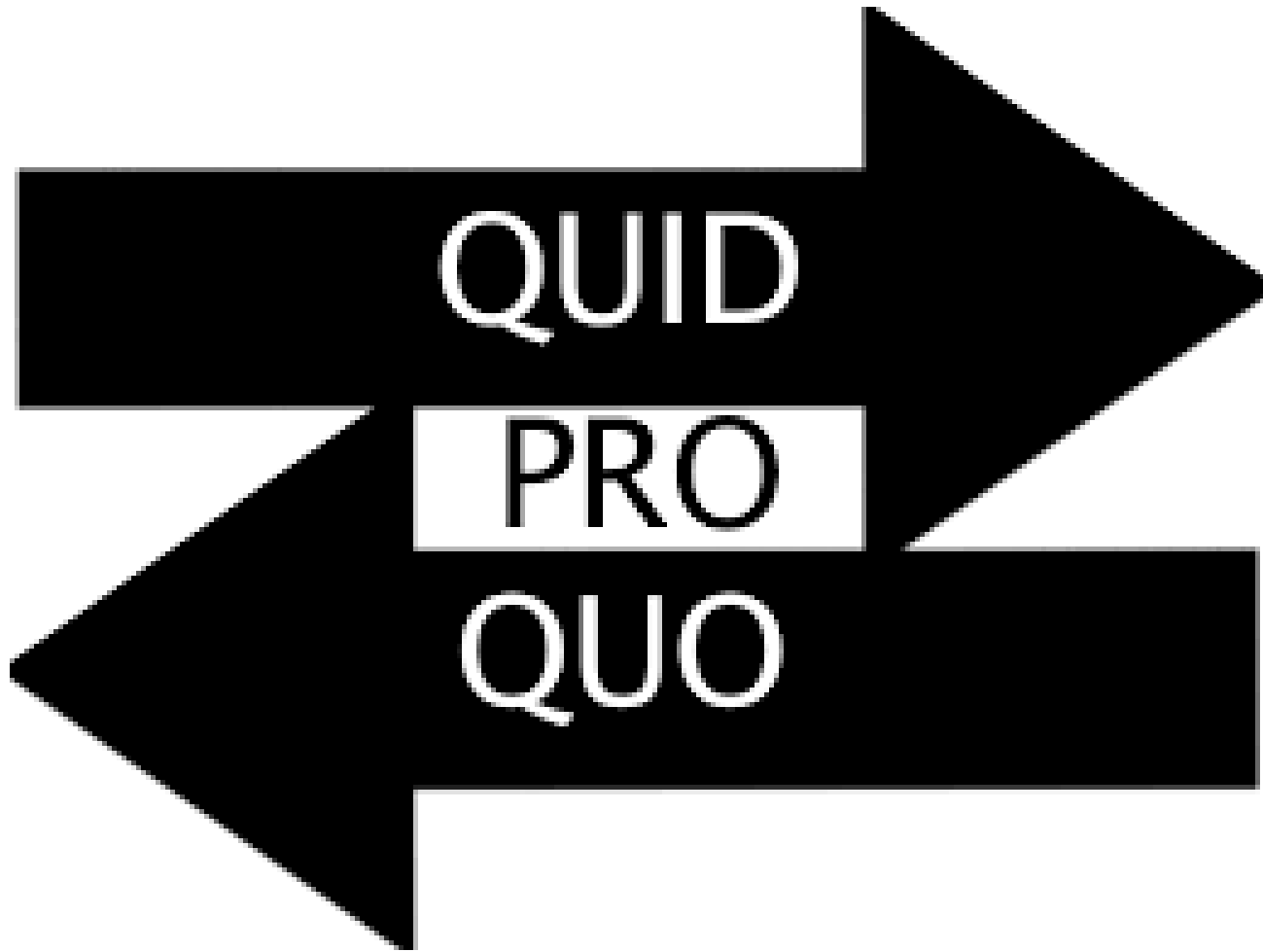


SEXUAL HARASSMENT DEFINITION

- Sexual harassment shall include conduct on the basis of sex involving one or more of the following:
 - (1) a district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcomed sexual conduct;
 - Quid pro Quo
 - (2) unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's educational program or activity; or
 - Hostile Environment
 - (3) sexual assault, dating violence, domestic violence, or stalking.
 - VAWA definitions

QUID PRO QUO





QUID PRO QUO

Definition:

Submission to the conduct is made a term or condition, explicitly or implicitly, of employment or receipt of education; or

Submission to or rejection of the conduct is used as the basis of employment or educational decisions affecting the individual.



PICTURE THIS

James did not take Advanced Media Production class, as the teacher of this subject, Ms. Smith, made a habit of having him model for class design projects, and the attention she gave him and comments she made about his physique made him uneasy.

Later, James approached the district's internship coordinator about his application to intern with a local marketing firm. His passions are graphic art design and audio-visual communication.

She explains that this is a highly coveted internship, and she leans on subject-matter experts on faculty to recommend student interns. She said the faculty expert, Ms. Smith, was not impressed with his application portfolio, course selection, or his grades.

When he approached Ms. Smith to see if she would reconsider her assessment of him for the internship, she said she would love to help him out, and she mentioned missing seeing him in class and that he has the perfect chiseled jawline for the cover of the Comic Con unit she has planned in AMP. James leaves the conversation confused.

Was this acceptable or harassment?

HOSTILE ENVIRONMENT

- Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to work/education.



HOSTILE WORKING/LEARNING ENVIRONMENT

- The conduct has the purpose or effect of substantially interfering with the individual's employment or education; or
- The conduct creates an "intimidating, hostile or offensive" working or learning environment.

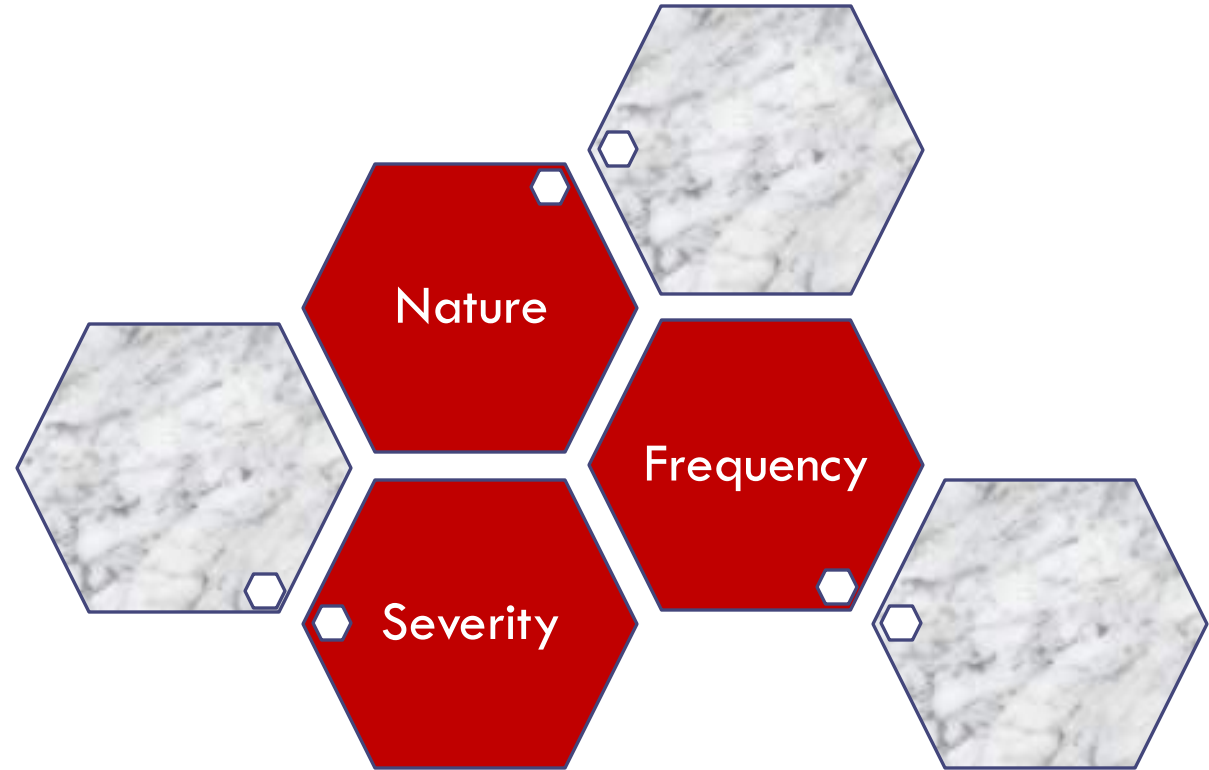
HOSTILE WORKING OR LEARNING ENVIRONMENT

- In determining if harassment has occurred, we look at the victim's interpretation, not the intent of the harasser.
- The victim feels the behavior is sexual harassment; and
- A reasonable person with the victim's perspective would consider it to be sexual harassment as well.
- There is no single test for distinguishing sexual harassment from merely offensive or inappropriate conduct.



HOSTILE WORKING OR LEARNING ENVIRONMENT

- Factors to Consider
 - Nature of the conduct:
 - Verbal or Physical?
 - Patently offensive or hostile?
 - Frequency
 - Severity
 - Who was the conduct directed at?
 - Relationship of the Harasser to the Victim
 - A person other than the one the conduct was directed at may be offended by the conduct





HOSTILE WORKING OR LEARNING ENVIRONMENT EXAMPLES

Making Others Uncomfortable
Through Actions

Unwanted Physical Contact

Unwanted Romantic/Sexual
Advances

Jokes

Nicknames

Etc.

WHEELS ON THE BUS

As investigator, you receive a complaint claiming that every morning a bus driver leaves his post to buckle a 7-year-old male student into a seat belt. When this happens, it is alleged that the bus driver uses the opportunity to graze the student's private areas.

When you pull the student's records, you find that there are a lot of sick days used and above average tardies to his first class. There's also a record of parents driving him home as a car rider despite him being a bus rider.

What questions do you need to ask and of whom to get to the bottom of this?



VAWA “BIG FOUR”

Sexual Assault

- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Dating Violence

- violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

Domestic Violence

- includes crimes of violence committed by a person who is a current or former spouse, partner, person with whom the victim shares a child, or who is or has cohabited with the victim as a spouse or partner, by a person similarly situated to a spouse of the victim under Kansas or applicable federal law, or by any other person against an adult or youth victim having protection from such person’s acts by Kansas or applicable federal law.

Stalking

- engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress.

THE BAND ROOM

During an overnight StuCo sponsored lock-in at the high school, it is alleged that a female student was raped in the band room. The building was generally open for students to move about, with staff members strategically posted in high traffic areas and gathering spots such as the cafeteria, gym, and the common's area. The female student was 17, and the male student was 15. They were involved in a dating relationship at the time.

What resources do you have to look into this?

What questions would you ask, and of whom?

What do you do differently from an operational standpoint next time?



OTHER DEFINITIONS

- **Complainant:** An individual alleged to be the victim of sexual harassment
 - Not necessarily the individual who reports or who files formal complaint
- **Respondent:** An individual alleged to be the perpetrator of sexual harassment
- **Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the school investigate the allegation of sexual harassment
- **Supportive Measures:** Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome, to the other party while designed to ensure equal educational access, protect safety or deter sexual harassment.

3 ROLES IN FORMAL COMPLAINT INVESTIGATION PROCESS



Title IX Coordinator

Employee designated to coordinate its efforts to comply with Title IX.

Appointed by board and always serves as Title IX Coordinator, cannot be Investigator or Decision-Maker in any case.



Investigator

carries out the investigation after the formal complaint is filed and conducts interviews of the witnesses, collects and documents evidence, and drafts an investigative report.



Decision-Maker

reviews all the evidence and prepares an impartial written responsibility determination as to whether the alleged conduct occurred and provides an opportunity for the parties and their representatives to prepare written questions to be answered by the other party.

**TITLE IX
COORDINATOR,
INVESTIGATOR,
DECISION-MAKER,
OR FACILITATOR
OF AN INFORMAL
RESOLUTION
PROCESS**



Shall not have a conflict of interest or bias for or against the complainant or respondent (personally or generally).

Will exercise objective evaluation of all available evidence, both inculpatory and exculpatory, and prohibit credibility determinations based on a party's status as complainant, respondent, or witness.



Will receive training to perform their roles

FORMAL COMPLAINT

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District where the formal complaint is filed.
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, by email, or by any other means that results in the Title IX Coordinator receiving the report.
- A formal complaint contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint (unless signed by the Title IX Coordinator).
- A complaint should be filed as soon as possible after the conduct occurs, but not later than 180 calendar days after the complainant becomes aware of the alleged violation, unless the conduct forming the basis for the complaint is ongoing.



EDUCATION PROGRAM AND ACTIVITIES



- “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution”
 - Think similar to “nexus to school” consideration in student discipline.
 - “In the United States”

HABITAT FOR HUMANITY

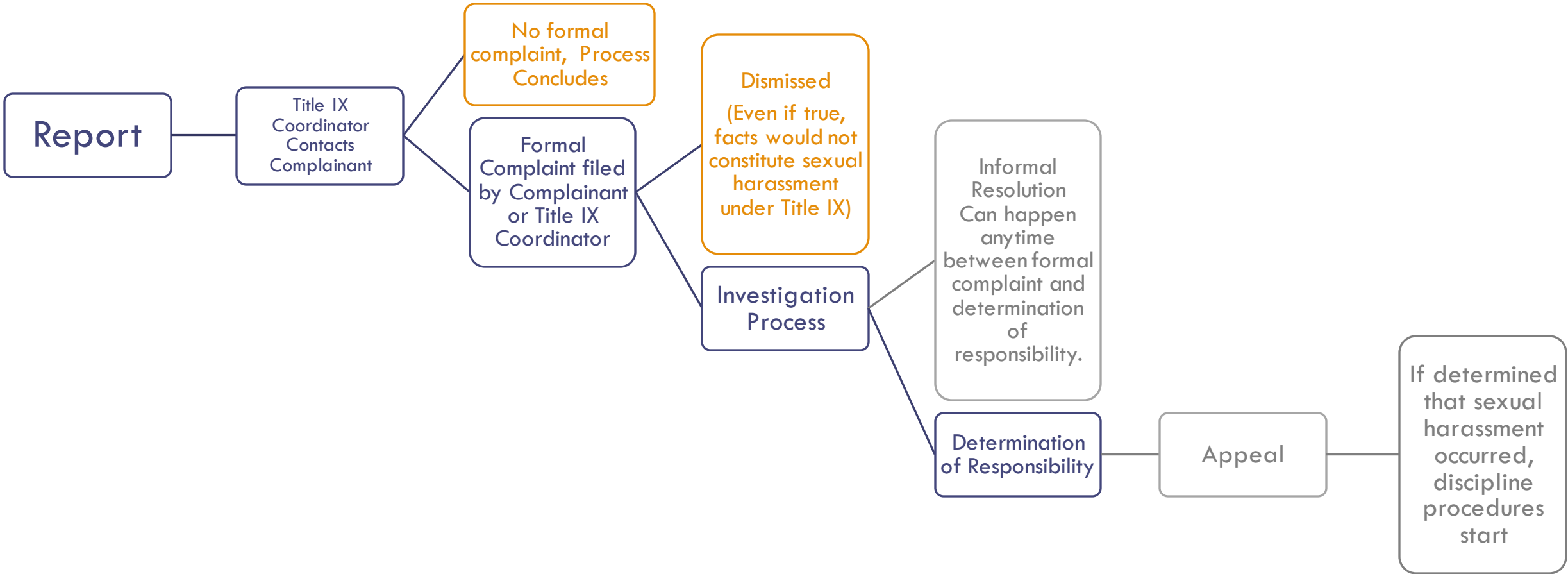
- A 17-year-old male student files a formal complaint on the first day of school that alleges an 18-year-old female student snuck into his tent on their Habitat for Humanity trip to Turkey, tied him up, and put a sex toy in his mouth against his will.
- What do you do with this one?



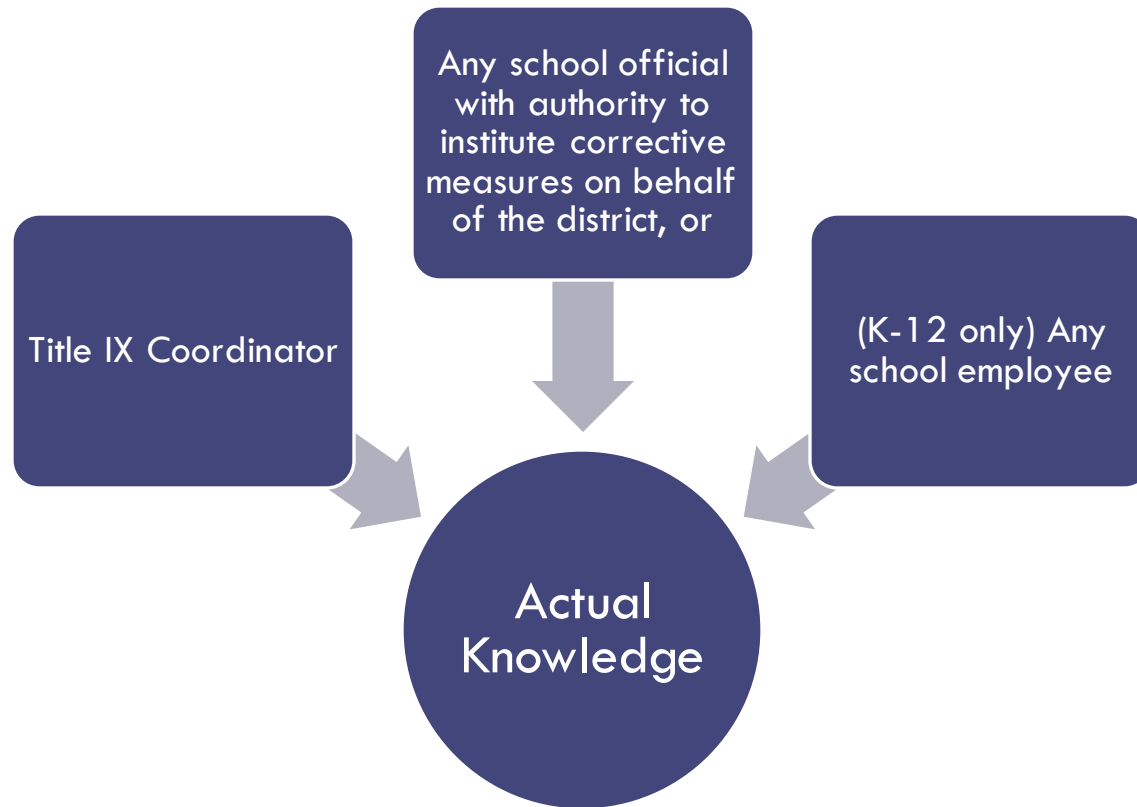


**OVERVIEW OF
FORMAL COMPLAINT
AND INVESTIGATION
PROCESS**

FORMAL COMPLAINT INVESTIGATION PROCESS



REPORT OF SEXUAL HARASSMENT



- District must respond when it has “actual knowledge” of sexual harassment.
- Actual knowledge:
 - Notice of sexual harassment, including claims of sexual harassment
- Other school employees report claims to Title IX Coordinator.

TITLE IX COORDINATOR CONTACTS COMPLAINANT

- Response must not be “deliberately indifferent”
 - Clearly unreasonable in light of known circumstances
- Promptly contact complainant, and meet confidentially:
 1. To discuss availability of supportive measures,
 2. Consider the complainant’s wishes with respect to supportive measures,
 3. Inform the complainant of the availability of supportive measures with or without a formal complaint, and
 4. Explain the process for filing a formal complaint.
- KASB Policy : 10 days, unless good cause for delay.
- Should respect complainant’s wishes regarding whether a school investigates, unless the Title IX Coordinator determines that signing a formal complaint over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

SO, WHEN SHOULD THE TITLE IX COORDINATOR FILE IN ABSENCE OF A COMPLAINANT WILLING TO DO SO?



- For liability purposes, it matters:
 - What do you know?
 - When did you know about it?
 - What did you do with that information?

SUPPORTIVE MEASURES

The district will treat the complainant and respondent equitably by offering supportive measures.

These non-disciplinary and non-punitive measures will be offered as appropriate, as reasonably available, and without cost to the complainant or the respondent.

Supportive measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party.

“Supportive Measures” shall include, but not be limited to, measures designed to protect the safety of all parties, to protect the district’s educational environment, or to deter sexual harassment.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

POSSIBLE SUPPORTIVE MEASURES

counseling

extensions of deadlines or course related adjustments

modifications of work or class schedules

escort services or increased security and monitoring

mutual restrictions on contact between the parties

changes in work locations

leaves of absence

WHAT IF THERE IS NO FORMAL COMPLAINT?

- Supportive measures may be provided to both parties regardless
- Document what happened
- Close the file
- Records are to be kept for 7 years



Title IX Coordinator Responsibilities

Title IX Coordinator may dismiss a formal complaint that is filed when the facts alleged in the complaint

do not meet the definition of sexual harassment under Title IX, or

did not occur in the school's education program or activity against a person in the United States.

Investigation Opened:
Notice provided to both parties that includes:

Notice of the allegations of sexual harassment including sufficient details to prepare a response before any initial interview including:

the identities of the parties involved, if known;

the conduct allegedly constituting sexual harassment; and

the date and location of the alleged incident, if known.

The district's investigation procedures, including any informal resolution process;

A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made by the decision-maker at the conclusion of the investigation;

Notice to the parties they may have an advisor of their choice and may inspect and review any evidence; and

Notice to the parties of any provision in the district's code of conduct or policy that prohibits knowingly making false statements or knowingly submitting false information.

If, in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice initially provided, notice of the additional allegations shall be provided to known parties.

IMPARTIALITY

Avoid Prejudgment of the Facts at Issue

- Title IX Coordinator's initial determination to dismiss/not dismiss not prejudgment

Conflicts of Interest

- Family member, etc.
- Past Dealings

Bias

- Personal bias or bias for certain parties, by virtue of their status as complainant/respondent/witness.

Cannot Rely on Sex-Stereotypes

INVESTIGATOR TRAINING

INVESTIGATION PROCESS

Notice

Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

Inspection & Review

Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, a draft of the investigative report and the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

Finalize Report

Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

INVESTIGATION TIPS



Ask open ended questions.



Remain impartial but build rapport and try to create comfortable environment for those you interview.



Remember all evidence must be shared with both parties.

INVESTIGATOR'S RESPONSIBILITIES IN THE PROCESS

Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the district and not the parties;

Not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence;

Be impartial and objectively evaluate all relevant evidence without relying on sex stereotypes;

Not have conflicts of interest or bias for or against complainants or respondent;

Not make credibility determinations based on the individual's status as complainant, respondent, or witness.

INVESTIGATOR'S RESPONSIBILITIES TO PARTICIPANTS

Provide an equal opportunity for the parties to present witnesses and evidence;

Allow the parties to be accompanied with an advisor of the party's choice;

Provide written notice of the date, time, location, participants, and purpose of any interview, meeting, or hearing at which a party is expected to participate;

Provide the parties equal access to review all the evidence collected which is directly related to the allegations raised in a formal complaint, including the investigative report, and the opportunity to respond to that evidence before a determination is made

INVESTIGATIVE REPORT

The investigator shall prepare an investigative report that fairly summarizes relevant evidence and share the report with the parties and their advisors for review and response.

The investigator's written report shall include an objective evaluation of all relevant evidence using a preponderance of the evidence standard to determine responsibility.

RELEVANCE

A 3D rendering of a white puzzle with one red piece missing, symbolizing relevance. The puzzle pieces are arranged in a grid, and the red piece is the central focus, standing out from the white pieces. The lighting creates soft shadows, giving the pieces a three-dimensional appearance.

The tendency of a given item of evidence to prove or disprove one of the legal elements of the case, or to have probative value to make one of the elements of the case likelier or not.

PREPONDERANCE OF THE EVIDENCE

Evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.





DECISION-MAKER TRAINING

DECISION-MAKER RESPONSIBILITIES

Receive Invest. Report

Upon receiving the investigator's report, afford each party the opportunity to submit written, relevant questions that the parties want asked of any party or witness

Exchange Questions

Provide each party with the answers, and allow for additional, limited follow-up questions

Determination Regarding Responsibility

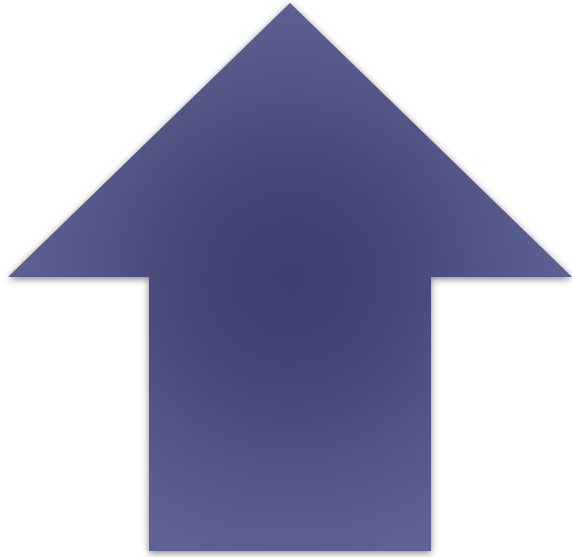
The decision-maker must make a determination regarding responsibility

Discipline

If determined harassment occurred, disciplinary procedures can begin

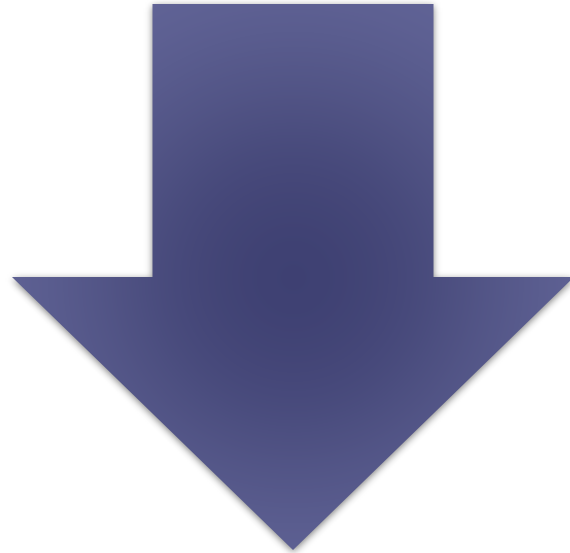
Finalize

The decision becomes final on the date the parties receive the results of an appeal, if any appeal is filed, or on the date the opportunity for an appeal expires



Relevance

is the tendency of a given item of evidence to prove or disprove one of the legal elements of the case, or to have probative value to make one of the elements of the case likelier or not.



Evidence

any of the material items or assertions of fact that may be submitted to a competent tribunal as a means of ascertaining the truth of any alleged matter of fact under investigation before it

RELEVANCE AND EVIDENCE

- Look to initial complaint, review investigation report.
- Consider all information that supports either parties' position, or in contradiction to them.
- Try to focus investigation on the complaint, but if additional issues arise, provide parties with the required notice.
- Be cautious of any evidence related to the sexual predisposition or sexual history of the complainant.
- In questions exchanged by parties in lieu of hearing, all questions must be relevant.

SEXUAL PREDISPOSITION OF COMPLAINANT

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

WRITTEN DETERMINATION OF RESPONSIBILITY



Identify the allegations potentially constituting sexual harassment



Describe the procedural steps taken, including any notifications to the parties, site visits, methods used to gather evidence, and interviews



Include the findings of fact supporting the determination



Address any district policies and/or conduct rules which apply to the facts



Address each allegation and a resolution of the complaint including a determination regarding responsibility, the rationale therefor



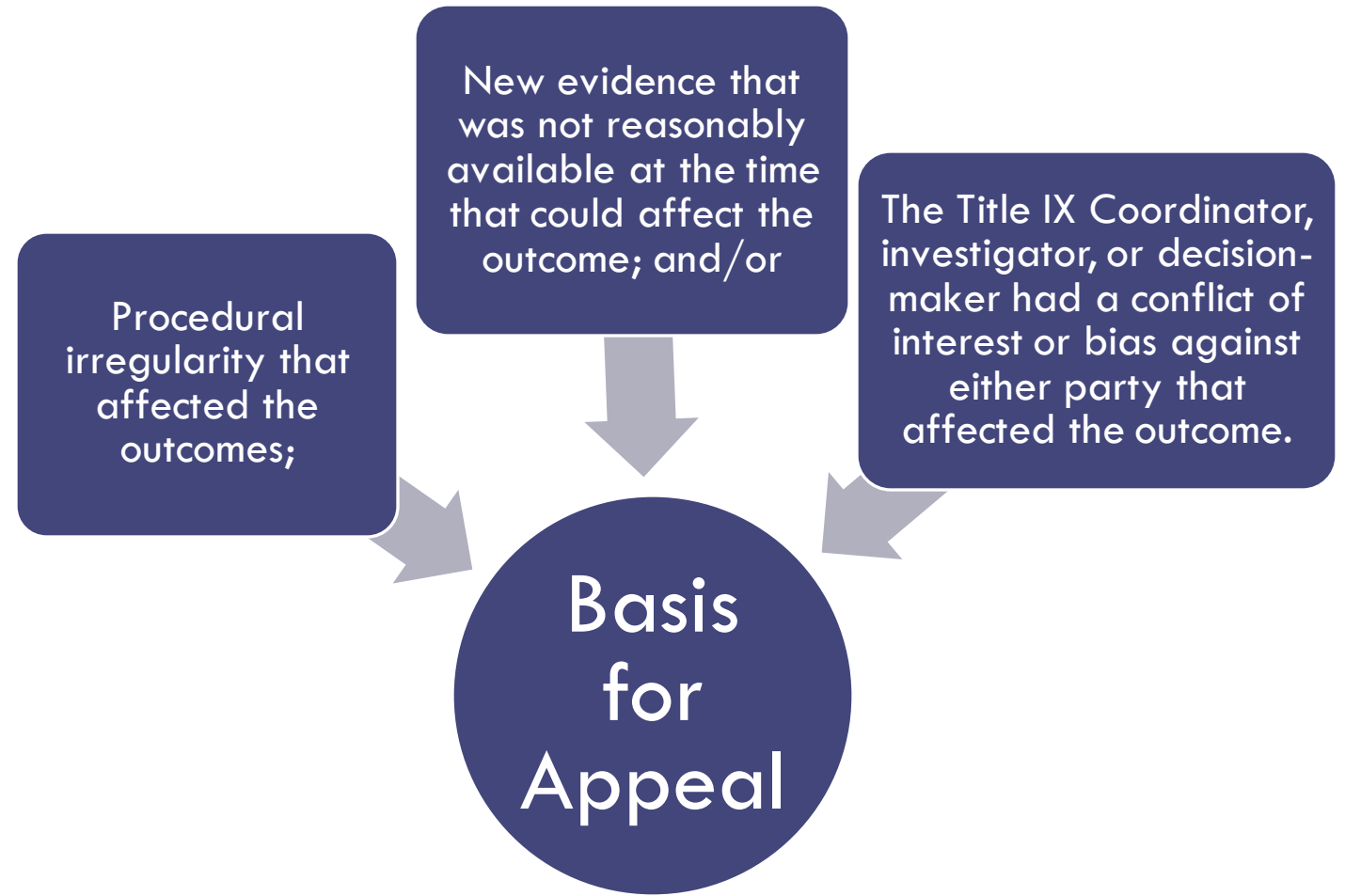
The procedures and permissible bases for the complainant and/or respondent to appeal the determination



Provided to parties at the same time

APPEALS

- The complainant or respondent may appeal the decision-maker's determination regarding responsibility or a dismissal of a formal complaint.
- Request for appeal shall be made in writing within 10 days after the date of the written determination regarding responsibility.
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Provide the written decision simultaneously to both parties



APPEAL DECISION-MAKER RESPONSIBILITIES



Review the evidence gathered by the investigator, the investigator's report, and the original decision-maker's determination;



Notify both parties in writing of the filing of an appeal and give them 10 days after the appeal is filed to submit further evidence in writing;



Not have a conflict of interest or bias for or against complainant or respondent and receive the required training;



Issue a written decision and the rationale for the decision within 30 days after the appeal is filed;



Describe the result of the appeal and the rationale for the result in the decision; and



Provide the written decision simultaneously to both parties and to the Title IX Coordinator.



WHO IS THE HEARING OFFICER ON APPEAL?

Appeals shall be on the record and heard by an attorney, an independent hearing officer appointed by the board, or the board. The appeal decision-maker may not be the Title IX Coordinator, the Investigator, or the decision-maker from the original determination.

INFORMAL RESOLUTION PROCESS

- The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:
 - The parties are provided a written notice disclosing the allegations, the requirements of the informal resolution process, information on when it may preclude the parties from resuming a formal complaint arising from the same allegations;
 - At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigation of the formal complaint and be informed of any consequences resulting from participating in the informal resolution process;
 - The parties voluntarily and in writing consent to the informal resolution process; and
 - The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.
- If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the proposed resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator.
- Title IX Coordinator. Within 20 days after the complaint is resolved in this manner, the Title IX Coordinator shall contact the complainant to determine if the resolution of the matter remains acceptable. If the matter is not resolved, or if the individual does not believe the resolution remains acceptable within 20 days after the informal resolution document is executed, the individual or the Title IX Coordinator may proceed with the formal complaint process.

BEWARE THE UNINTENDED CONSEQUENCES OF INFORMAL RESOLUTION...



QUESTIONS?

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